

**Planning Board Meeting
November 8, 2021
Civic Center
Minutes and General Account**

Planning Board Members Present: Sarah Glanville, Chair; Ed Stafford, Vice Chair; Dennis Sholl, Jane Walker Payne, Russ Walker, Jr., Donald Dale, Jr., (ETJ) Robert Coon (ETJ), Sherrie Richmond (ETJ), Cara Arena (ETJ).

Town Council Representative Present: Rebecca Mann Rayborn

Staff Present: Dave Treme, Town Manager; Matthew Johnson, Planning Director; Anna Hawryluk, Planner; Katie Weiner, Town Clerk; Nancy Avery, Interim Town Clerk

Visitors Present: Shanna Moore, Elizabeth Ward, Eddie Oakley, Tom Tervo, Brad Yoder, Tim Hess-Timmons, Sandra Janssen, James Lutzweiler, Bob Dischinger, Ryan Moats, Peggy Levi, Norma Marshall, Carol Brooks, Andrew White, Lynn Duffy, Diane Nulty.

Call to order - Glanville called the meeting to order at 6:00 pm.

Roll call - Johnson took roll call as follows:

Sarah Glanville - Present
Ed Stanford - Present
Dennis Sholl - Present
Jane Walker Payne - Present
Russ Walker - Present
Donald Dale - Present
Robert Coon. Present
Sherrie Richmond - Present
Cara Arena - Present

Council Member Rayborn - Present

There was a quorum present.

Public Hearing request for recommendation regarding several updates to the Land Development Ordinance

Glanville asked Hawryluk to present the updates.

Hawryluk stated there are formatting changes included such as all documents are now a portrait-layout whereas before there was a mixture of landscape and portrait. Also pictures for the pole sign were updated to be easier to understand. The subdivision entrance section was removed as it was addressed in another section which was contradicting regarding height of monument signs.

Richmond said she has questions on each page, and is mainly concerned about timeframes on signs as it is not delineated. Some things are mixed or blended too much so that you have to read carefully to know whether it applies to residential or not. The section on flags is an example. Pole signs need to be looked at as to what is appropriate for future architectural design.

Hawryluk responded that said timeframes are covered in the temporary signs section and she is happy to look at the other areas for this. The Town might need to need to hire someone to help with these concerns. She also said she could review with Member Richmond separately.

Hawryluk stated the other article is a nuisance abatement and minimum housing code. The Town previously did not have this. It was written by Brandon Emory with Alliance Code Enforcement (ACE).

Emory explained his agency was tasked with looking at the ordinances and they are working with fourteen other towns. Minimum housing code allows them to work on in-house items without bringing in the Building Inspector. There were some crossovers between residential and commercial areas. The primary purpose of the updates is housekeeping and required North Carolina General Statute 160D changes. This article allows the town to properly take enforcement action. They picked up fifty temporary signs recently. He said he is glad to answer any questions about signs.

Glanville opened the Public Hearing at 6:10 pm.

There were no comments.

Glanville closed the Public Hearing at 6:11 pm.

Board Discussion:

Richmond said she has editing items she will give to Hawryluk.

Vote on recommendation to Town Council

Stafford made a motion to approve the LDO updates as presented. Arena made a second to the motion. Weiner took a roll call vote as follows:

Glanville- aye

Stanford - aye

Sholl - aye

Payne - aye

Walker- aye

Dale - aye

Arena - aye

Coon - aye

Richmond - aye

The motion passed by a unanimous vote.

Adoption of Statement of Consistency

Stafford made a motion that the proposed zoning text amendment be approved based on the following:

1. The proposed zoning text amendment is consistent with the adopted Comprehensive Plan of the Town of Jamestown. The Planning Board further finds that the proposed zoning text amendment is consistent with the Comprehensive Plan because: Periodic updates to the zoning texts are necessary based upon changing conditions, regulations, and laws. Updates establish Town compliance with regulating bodies and ensure that guiding documents are accurately operational for each of the current goals of the Comprehensive Land Development Plan.
2. The proposed zoning test amendment is reasonable. The Planning Board considers the proposed zoning text amendment to be reasonable because:
 - A. The report of the Town staff finding the proposed zoning text amendment to be reasonable is adopted by reference.
 - B. The Planning Board further finds that the proposed zoning text amendment is reasonable because: The text edits correct any previous errors and add clarifying language and formatting to make the documents easier to interpret and apply.

AND

3. The proposed zoning text amendment is in the public interest. The Planning Board considers the proposed zoning text amendment to be in the public interest because:
 - A. The report of the Town staff finding the proposed zoning text amendment to be in the public interest is adopted by reference.
 - B. The Planning Board further finds that the proposed zoning text amendment is in the public interest because: Continuous improvement to the guiding documents promotes consistent and equitable application of the regulations that promote the general health, safety, and welfare of the people of Jamestown.

Walker made a motion to second the motion.

The motion passed by unanimous vote.

Public Hearing for rezoning request for 2221 Guilford College Road, 5300 Mackay Road, 2207 Guilford College Road, and 5303 Mackay Road from Agricultural (AG) to Planned Unit Development (PUD)

Johnson introduced Tom Terrell, a land use attorney hired by the Town. Terrell stated the matter coming before the Board is neither routine nor inconsequential. He said the concept of the Planning Board began to appear in this country at the turn of the century and its roles and authority may vary except in the state of North Carolina. The state follows Dillon's Law which means local governments do not have the power of home rule. State statute says the town can adopt its own meeting dates and elect its officers, but the purpose is to recommend and/or provide guidance only to the Town Council. The Planning Board is the keeper of the Comprehensive Plan. By statute, any change starts with you, the Planning Board. Before any zoning change may be made it must come before the Planning Board and the Board must state if it has general consistency with plan. If the Planning Board allows it, it is the first place a citizen gets a say in the process. The Town held a public process explaining this rezoning request and he applauds them for that. 'Review and comment' are your guiding words. You have the power to recommend, but you do not have the power to control.

Glanville requested that Johnson present opening remarks on the rezoning request.

Johnson explained that the rezoning request is for 467 acres formally known as the Johnson property which is now owned by D. R. Horton. It is logical to believe this property would be developed in the future as it is situated in a high growth area. The Town defined its future areas of growth in an Extra Territorial Jurisdiction (ETJ) area and this property is within the ETJ. The Land Use Plan (LUP) completed in 2007 also referenced this property as future residential development. The ETJ boundary was extended in 2008. This move was strategically done to be in position for future growth.

The proposed rezoning is from Agricultural (AG) to Planned Unit Development (PUD) for 467 +/- acres identified as:

- 2221 Guilford College Road (Parcel#159144) - approximately 27.89 ac +/-
- 5300 Mackey Road (Parcel # 159105) - approximately 30.70 ac +/-
- 2207 Guilford College Road (Parcel # 159106 - approximately 384.49 ac +/-
- 5303 Mackay Road (Parcel # 158765) - approximately 0.6 ac +/-

The referenced property is currently mostly vacant and primarily consists of forested and pasture land. The property has been reviewed by the Town's Public Services Department and water and sewer access is available on or near the property. The reason for the request is to develop a high quality residential development which is not a use permitted in Agricultural zoning.

In mid - February of 2020, a request was brought to the Town by Diamondback and after consideration the Planning Board recommended denial of the request.

The Town Council engaged land use attorney Tom Terrell for assistance and determined that the applicant was not being reasonable in the request and denied the application. The developer petitioned the General Assembly to remove ETJ from Jamestown. The Town fought back and won.

Council and staff recognized the importance of getting the development of this area right and entered into a contract with Mr. Harry in September of 2021 to conduct public information workshops to work towards achieving a development that is sustainable. A site plan was developed as a result of this process. D.R. Horton watched and listened to this process and became aware of the site plan. Horton has developed a plan that matches the Town's proposed site plan closely.

As part of the process, the Town Council and staff are recommending a Development Agreement to collaboratively address development issues during the extended period of time of this development.

The Town is reviewing the application in relation to adequate services to be provided by the Town for garbage removal, water and sewer services, and so on.

The decision before this Board tonight is to determine whether the rezoning request from AG to PUD is consistent with the Town's Comprehensive Plan.

Staff requests favorable recommendation of this rezoning request with a Development Agreement to be adopted by the Town and the developer.

Terrell said state law allows Development Agreements to deal with large scale, long term, multi- phase projects. It creates a figurative table where everyone with a voice in the process can sit and talk to flush out details once the Council has approved a project. The PUD will have its own development standards. The Development Agreement enables the Town to work out the path by which standards are implemented and what happens if not implemented. Most importantly, it creates a trigger point that allows timeframe and conditions to be imposed. It helps the Town to budget capital outlays that will occur because of the project. It specifies things such as who provides utility connections, who oversees the process, and how they are served. By statute, the Development Agreement is made public and must be adopted by ordinance and by Public Hearing. It must be adopted separately from the rezoning request. It will keep the project moving forward to enhance and protect the Town.

Arena asked if the Development Agreement is a living, breathing document for just this project or for future use.

Terrell answered it can last for whatever reasonable circumstances of the project allows. It can be modified, but a major modification must come back to Council for approval.

Glanville asked if the document outlines actions that may be taken should either party not follow through on what is agreed on.

Terrell replied that is correct.

Johnson introduced Seth Harry of Seth Harry and Associates. The Town Council hired Mr. Harry to conduct community input sessions and work with Council throughout this process.

Mr. Harry stated that in anticipation of preparing for the next phase of this project, he is in the process of outlining some tools and techniques for translating input received from the public including design standards. This will give the ability to confirm whether or not those preferences from the workshop are concrete and defined in the document.

Arena asked if there is a chance those principles from the engagement sessions could be left out of the Development Agreement.

Harry said yes, it is possible; but it would be at the detriment of the applicant.

Richmond asked who will make sure those principals are in the Development Agreement.

Terrell answered that the Town staff would work on that.

Coon asked if we do not know the contents of the Development Agreement, which is the definition of whether it matches the Comprehensive Plan, how can the Planning Board recommend and or state that it is consistent or not with the Comprehensive Plan?

Terrell stated that none of the details of the principles in the Development Agreement are in the Comprehensive Plan.

Arena asked if there is anything saying that the developer is going to do with they say they will. Terrell replied there are two stopping points; one with the Town Council as first defense from preventing the developer from going off the rails and two with the residents and voters that vote for Council members. There is a level of trust with the applicant who is a professional with its reputation on the line.

Glanville says she understands the question they are voting on is not that the ultimate development is consistent with the Comprehensive Plan, but whether the tool of the PUD is consistent with the Comprehensive Plan. Is that correct?

Terrell said yes, that is correct.

Glanville requested that the applicant's representative, attorney Mark Isaacson, to present his application.

Isaacson stated he is a private attorney representing the applicant. You have a real professional in Attorney Terrell working for you. Managers from D.R. Horton and two civil engineers are present tonight working as a team to bring this request to the Town. Horton realizes the need to work with the Town on this project to move forward. The ordinance allows flexibility in developing such a large property as Johnson Farm. The PUD and Development Agreement that Horton has agreed to enter into provides flexibility for this project development. Horton's expectation is for a fairly conventional detached housing and attached housing along with lock and leave housing that are a little closer together than most housing. Housing is expected to be reasonably affordable high quality housing catering to younger adults. Amenities on property would be light retail such as coffee shop catering to the residents. Amenities will ensure compatibility with surrounding developments. We anticipate having a community center with historical artifacts from the Johnson family. The LDO defines A PUD as intended to accommodate a range of uses and to encourage new development while preserving historic development patterns. We have worked for months with town staff to comply with ordinance. We developed a bubble map that overlays well with the map developed from the planning process. We are starting a long, long process on this development. The Planning Board is the first step of many, many steps. Through preliminary engineering, we have determined where certain uses can go on the property. There are a lot of streams on the property and they have to be respected. There are a lot of topographic issues on the property that have to be worked with. Access points need to be determined and this is a big variable. We have to answer to other agencies also such as the U.S. Army Corp of Engineers (USACE), Department of Transportation (DOT), Department of Environmental Quality (DEQ), and Guilford County. It may take over a year to get through the process of a final plan of what goes where, so we are not coming before you presenting architectural designs as we are a long way away from that. Horton participated in the public charrette process and listened and learned. It is virtually impossible to provide a density number this early in the process based on variables mentioned above, but Horton does commit that density will be consistent to that in the Comprehensive Plan.

Arena said that the planned uses for the development areas were great but the alternate plan use in the land use is great but the alternate use were concerning because eight out of ten areas could become commercial.

Isaacson said we would want to put most amenities near access points which have not been submitted. Horton is not a commercial developer but residential and the property was bought with the vision of residential use.

Richmond said eight out of ten commercial area uses were frightening. Hawryluk explained that this gives the possibility for commercial use, but doesn't require it.

Isaacson responded that by the time we get through Council review and approval, those uses should be better planned.

Glanville said the PUD designation is not specific but allows light commercial use.

Isaacson responded that the word is 'compatible'. Commercial use has to be compatible with residential use. Commercial uses would only be to serve community residents.

Glanville opened the Public Hearing at 7:33 pm.

1. Tom Tervo, 2 Langholm Court –

Tervo stated he attended meetings with Seth (Hardy) and he is all for the PUD. He thinks it gives the Town as much control as possible, but he is not sure safety was adequately addressed in the plans. He thinks safety is not addressed enough in streets and he recommends roundabout and wide streets. Fewer commercial properties make sense to him so as not to compete with the existing Town commercial district. He did not hear much about recreation opportunities and prefers a community swimming pool. Housing density was touched on and he believes that there is an environmental defense for houses closer together since not as much green space is used. He provided written comments to the Town Clerk which would be distributed to the Planning Board Members after the meeting.

2. Norma Marshall, 21 Gatehouse Lane –

Marshall said she is right by Mackay Road near the bridge. She has been lucky to have Johnson farm land as her back yard, so this is sad for her. Her concerns are loss of acres of forest, soil erosion, loss of natural beauty, and loss of trees which leads to water runoff and pollution that requires treatment. She thinks they should perform land management before development to preserve trees, and research use of organic matter to help prevent run off. If PUD contributes to flooding and we have to purchase FEMA insurance, will the developer help us with cost? Trees filter pollutants and we need a diversity. The wildlife habitat will be endangered. Will the County Commissioners provide an analysis? She provided the Town Clerk with her written comments and asked that they be distributed to the Planning Board.

As there were no more persons signed up to speak, Glanville closed the Public Hearing at 7:41 pm.

Deliberations:

Coon said under the LDO there are two items the Planning Board needs to consider that he does not believe have been addressed. Density is one of those requirements and signage is the other. Terrell said one of two things can be done. The Board can ask Mr. Isaacson to come back and if that is not done, it will resort to what the ordinance requires. The LDO does not say how density is to be presented. He does not interpret that to mean an actual number.

Arena stated the PUD is consistent and appropriate. Her biggest concern is the timeline for consideration for ETJ members to have a voice. This is the opportunity for ETJ residents to have a bigger voice but they are not part of the Development Agreement process. They can email Council members, but as part of ETJ they cannot vote for the Council members. She does not think it is a good decision that the Planning Board cannot be a part of the Development Agreement process. That should be considered.

Coon asked who is the Planning Board member on the Town's Technical Review Committee (TRC) that is involved in the Development Agreement process.

Glanville said she used to attend the TRC meetings in years past when the Planning Board would vote one way and Town Council another causing confusion. The state's School of Government (SOG) recommends having a liaison from the Town Council to attend Planning Board meetings and as liaison for TRC meetings.

Terrell said by ordinance the Planning Board has no vote on the TRC. The purpose of the TRC is to ensure compliance with ordinance and laws. The Planning Board is not influential, but has a watch and listen role.

Glanville says Arena brings up a good point in that the area of town most affected has the least representation. Is there a way to address that?

Terrell stated he does not think the ETJ area is the most impacted. They are closer in vicinity, but this type of project has a much broader impact than to just those living across the street. Statute does not give the Planning Board any power or allow for input on development. Certainly written or other comments will be considered.

Coon asked what is the lead time for publication of the Development Agreement.

Terrell responded thirty days prior to the Public Hearing.

Arena said the statute does not state that the Planning Board cannot, does it?

Terrell said that statute must explicitly give that power to the Planning Board and it does not.

Richmond said someone once told her perception is reality. The ETJ residents' perception to some people is that they no longer have a voice because there is no ETJ representative on the Town Council. The largest and most important development will occur with no ETJ input. The average citizen in the major development in the ETJ is perceiving he or she is being left out. Once this leaves the Planning Board, there is no longer a voice for ETJ residents. She wants the perception to shift so that ETJ residents will be heard. Could the Development Agreement draft be brought before the Planning Board for review and comment?

Terrell responded that this is harder to do on a Development Agreement with one key stakeholder which is Horton. As to how the public is looking at it, once there is template that has a lot of meat on the bone, he has no problem with that being made available to the public. It is a possibility to bring the draft to the Planning Board, but he is hesitant to commit to that because of statute prohibition. He wants everything to be legally defensible.

Isaacson said that Horton would like to invite ETJ members for another listening session because they think they are impacted and they would like to hear the concerns. To the extent that we are able to legally able to do so, we would like to work that out.

Richmond said that is a good idea that will help with the current polarization between the two areas.

Glanville said she thinks a lot of concerns of the ETJ residents are the same as Jamestown proper residents, but there are unique concerns such as street lighting that could impact nearby homes in the ETJ.

Coon said he was not part of the Planning Board with the Diamondback application and commended the Board and staff on this process. It was much more open and collaborative and he appreciates Horton's offer to allow ETJ residents to participate in the Development Agreement process.

Vote on recommendation to Town Council

Stafford made a motion to recommend approval of the rezoning application to the Town Council, subject to (i) the site-specific master development plan submitted to the Planning Board shall be approved by Town Council; (ii) a Development Agreement shall be approved by Town Council; (iii) the permitted residential density will be as determined by Town Council as part of the site-specific master development plan and subject to a Development Agreement; and (iv) any variance in signage from the LDO standards shall be approved by Town Council and subject to the Development Agreement.

Richmond made a second to the motion.

Weiner took a roll call vote as follows:

- Glanville- aye
- Stanford - aye
- Sholl - aye
- Payne - aye
- Walker- aye
- Dale - aye
- Arena - aye
- Coon - aye
- Richmond - aye

The motion passed by a unanimous vote.

Adoption of Statement of Consistency

Stafford made a motion that the proposed zoning amendment be approved based on the following:

1. The proposed zoning amendment is consistent with the adopted Comprehensive Plan of the Town of Jamestown. The Planning Board further finds that the proposed zoning amendment is consistent with the Comprehensive Plan because: The 2020 Comprehensive Land Development Plan adopted "planned Unit Development" (PUD) as a zoning tool available to

use on large parcels of land to promote and encourage pedestrian friendly, traditional neighborhood land-use patterns and development.

2. The proposed zoning amendment is reasonable. The Planning Board considers the proposed zoning amendment to be reasonable because: The report of the Town staff finding the proposed zoning amendment to be reasonable is adopted by reference. The Planning Board further finds that the proposed zoning amendment is reasonable because: The property in question is part of Jamestown's "preliminary growth area" due to its size and location and the PUD zoning designation allows for regulated growth that meets Jamestown's goals and needs.

AND

3. The proposed zoning amendment is in the public interest. The Planning Board considers the proposed zoning amendment to be in the public interest because:

- A. The report of the Town staff finding the proposed zoning amendment to be in the public interest is adopted by reference.

- B. The Planning Board further finds that the proposed zoning amendment is in the public interest because: The PUD zoning designation provides for oversight and regulation by Town staff and elected officials to ensure any new development meets the goals and guiding principles of the Comprehensive Land Development Plan including, but not limited to, making smart growth decisions that maintain and enhance Jamestown's special community characteristics, preserving Jamestown's natural and historic resources, and keeping Jamestown a welcoming and inclusive community.

Coon made a second to the motion.

The motion passed by unanimous vote.

Consideration of date for next regularly scheduled meeting

Johnson informed the Board that it will convene December 13th as the Board of Adjustment.

Public Comment

There were no public comments.

Adjournment

Walker made a motion to adjourn at 8:10 pm.

Sholl made a second to the motion.

The motion passed by unanimous vote.

The meeting ended at 8:10 pm